

Notice of Allowability

Application No.

10/664,892

Examiner

Robert Shiao

Applicant(s)

WULFF ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to responses filed on 07/29, 2004.
2. ☒ The allowed claim(s) is/are 3 and 26-38, now 1-14.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 10/368,577.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

1. This application claims benefit of the foreign application:
GERMANY 19962601.4 with a filing date 12/23, 1999.
2. Amendment of claims 3, and 28-33, and cancellation of claims 1-2, 4-25 in Paper No. 0704, dated July 29, 2004, is acknowledged. Claims 3 and 26-38 are pending in the application.

Responses to Amendment

3. Since the limitation of the variable Y of formula (I) has been incorporated into claim 3, therefore, the rejection of claims 3 and 26-38 under 35 U.S.C. 112, first paragraph, has been overcome in Paper No. 0704, dated July 29, 2004. Since the limitation "step (a)" of claim 28 has been eliminated, therefore, the rejection of claim 28 under 35 U.S.C. 112, second paragraph, has been overcome in Paper No. 0704, dated July 29, 2004.

Responses to Arguments

4. Applicant's arguments regarding rejection of claims 33-38 under 35 U.S.C. 102(b) and 103(a) filed on July 29, 2004, have been fully considered and they are persuasive. Since the instant invention is drawn to a process of making a compound of formula (I), and the dependent claims 33-38 are drawn to a process of making the intermediate of formula (III), therefore, Dever et al. 3,459,837 is not qualified a prior art

against the instant invention. The rejection of claims 33-38 under 35 U.S.C. 102(b) and 103(a) is withdrawn herein.

Reasons for Allowance

5. The following is an examiner's statement of reasons for allowance:

Claims 3 and 26-38 are neither anticipated nor rendered obvious over the art of record, and therefore are allowable. This invention relates to process for the preparation of N-phosphonomethylglycine. The closest prior art of record is Felix's US 4,476,063, discloses N-acylaminomethyl-N-cyanomethyl phosphates. The difference between instant claims and Felix's is that the instant starting material (i.e., compounds of formula III) of processes is not used. Suggestion for modification of prior art to obtain the instant processes, has not been found. Claims 3 and 26-38 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

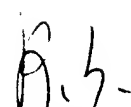
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert Shiao, Ph.D.
Patent Examiner
Art Unit 1626


Joseph K. McKane
Supervisory Patent Examiner
Art Unit 1626

10/4/04

October 4, 2004